IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-04-2007

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 8904 of 2007
-o-

M/s. Casa Grande Private Limited
rep. By its Director M. Arun Kumar
New No.43, Old NO.22, 'Shrishti'
Dr. Radhakrishnan Nagar Main Road
Dr. Radhakrishnan Nagar
Tiruvanmaiyur, Chennai - 600 041 .. Petitioner

Versus

Chennai Metropolitan Development
Authority (CMDA)
rep. By its Member Secretary
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Chennai - 600 008 .. Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Sriram Panchu, Sr. Counsel
for Mr. N.L. Rajah, Mr. G. Swaminathan
and Mr. Arun Anbumani

For Respondents : Mr. Viduthalai, Advocate General
assisted by Mr. J. Ravindran for CMDA

ORDER

WEB COPY

This writ petition is listed today for admission and I heard the learned Senior Counsel for the Petitioner as well as the learned Advocate General appearing for the respondent.

2. The petitioner has come forward with this writ petition praying for a Writ of Certiorarified Mandamus calling for the records of the respondent culminating in the communication bearing letter No.B1/24359/2006 dated 07.03.2007 issued by the respondent directing the petitioner herein to provide for a 10 meter wide link road running in the property sought to be developed by the petitioner, quash the same and to direct the respondent to grant planning permission to the petitioner for its project "RIVIERA" at Velacherry- Tambaram Main Road, Pallikaranai Medavakkam, Chennai under the Town and Country Planning Act, 1971.

https://hcservices.ecourts.gov.in/hcservices/

3. The case of the petitioner is as follows:-

The petitioner company has submitted an application in SBC No. 1244 on 23.11.2006 to the respondent seeking planning permission for construction of stilt + four floors of residential building i.e., group development in 4 blocks and a ground + first floor club house in their lands to an extent of 4.47 acres comprised in Survey Nos. 192/1, 2, 193/1, 2, 3, 4, 5, 6A, 6B, 7, 8A, 8B, 197/1, 2, 3 and 198/1 of Medavakkam Village abutting the Tambaram-Velacherry-Velacherry Main Road. The authorities of the respondent have also inspected the said lands and thereafter, the petitioner was requested to pay a sum of Rs.21,400/- towards scrutiny fee which was also paid by it. While things are such, the respondent has sent a letter in No.B1/24359/2006 dated 07.03.2007 directing the petitioner to furnish revised plan satisfying Development Control Rules by providing 10 meter wide link road from Tambaram-Velacherry Main Road for opening up development in the rear side of the construction site, which is impugned in this writ petition on the ground that it is illegal and excess of jurisdiction.

4. The case of the respondent is as follows:-

The planning permission application submitted by the petitinoer was examined wherein certain provisions of Development Control Rules were found violated and some other additional particulars were noted, hence, the impugned lletter was directing the petitioner to submit a revised plan along with additional particulars in accordance with the Development Control Rules. In any event, the writ petition is not maintainable since alternative and efficacious remedy by way of appeal is available to the petitioner.

5. Mr. Sriram Panchu, learned Senior counsel appearing for the petitioner submitted as follows:-

The petitioner has submitted a plan satisfying all requisite provisions of the Tamil Nadu Town and Country Planning Act, 1971, hereinafter referred to as 'the Act' and Development Control Rules for Chennai Metropolitan Area in existence, hereinafter referred to as 'Development Control Rules' without any deviation from any of its prescribed standards. The respondent has no authority, whatsoever, to impose the conditions to provide 10 meter wide link road from Tambaram Velacherry Main Road for opening up development in the rear side of the site under reference or to furnish revised plan and such restrictions are violative of fundamental rights enshrined under Article 19 (1) (g) of the Constitution of India. Development means carrying out of all or any of the works contemplated in regional plan or master plan as stated in Section 2 (13) of the Act, whereas, in the case on hand, the said road now insisted neither a scheme road nor a proposed road contemplated by the master plan or development plan. There is absolutely no necessity and legal basis for the respondent to insist on the petitioner to provide 10 meter wide link road for opening up development in the rear side of the proposed construction site. Moreover, the rear side of the proposed construction site is a large extent of paddy fields, which also surrounded by access roads from the arterial Tambaram-Velacherry Main Road. Rule 19 (b) (II)(iii) of Development Control Rules relating to

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

group development, based on which the petitioner has submitted the plan, which contemplates that the vehicular access way including passage if any, within the site shall have minimum width of 7.2 meters and such vehicular access shall be available for every building block in the site within a distance of 50 meters and the same is strictly followed by the petitioner, hence, insisting to provide for 10 meter wide link road is illegal. Section 17 of the Act speaks about Master Plans. The master plan propose or provide several matters including areas reserved for future development, expansion and for new housing. In the existing master plan, the area in dispute is not reserved for future development at all, hence, it is not open to the respondent to insist to provide 10 meters wide link road. Section 49 (2) (c) of the Act speaks about future development and maintenance of the planning area. Even for the said future development and maintenance of the planning area, the conditions can be laid only in accordance with the existing Act, Rules, master plan or development plan etc., but cannot impose any other condition arbitrarily, which is not provided therein, hence, the respondent cannot take shelter under the said Section 49 (2) (c) of the Act also. Rule 2 (b) (ii) of the Development Control Rules says that while granting permission, the Chennai Metropolitan Development Authority or other Authority or person to whom the Authority had delegated its powers may impose such restrictions and conditions as may be necessary under these Rules. The respondent, contrary to the Development Control Rules insisted 10 meters link road as a public street running in the middle of their property, that too, to develop the rear side property namely paddy field, such access is wholly unnecessary, resulting in reduction of floor space index; privacy and security to the housing community will be a great concern; the large extent of lands will be bifurcated resulting in two separate plots; huge expenditure on infrastructure such as gensets, sewage treatment etc., would be duplicated as the large extent of lands would not be a single plot and separate amenities would have to be provided for both plots; the large frontage of the proposed development site, which is about 130 feet would be lost and the entire building plan has to be re-designed.. In support of this contention, the learned Senior counsel for the petitioner relied on the below mentioned decisions:-

(i) (T. Vijayalakshmi and others vs. Town Planning Member and another) (2006) (8) Supreme Court Cases 502 wherein in Para Nos. 13, 14, 15 and 18, it was held thus:-

> "13. Town planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken iinto consideration by the Authority and the State. But the right of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

14. Nobody questioned the validity of the existing law. The High Court has not held that the existing laws are ultra vires. It merely proceeded on the assumption that the law which may be brought into the statute-book would be more eco-friendly.

15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of legitimate expectation in a case of this nature would have a role to play.

18. It is thus, now well-settled law that an application for grant of permission for construction of a building is required to be decided in accordance with law applicable on the day on which such permission is granted. However, a statutory authority must exercise its jurisdiction within a reasonable time."

ii) (K.K. Bhalla vs. State of M.P. And others) (2006) 3 Supreme Court Cases 581 wherein the Honourable Supreme Court in Para No.60, it was held thus:-

"60. The development plan was prepared in terms of the 1973 Act and the Rules framed thereunder. Change of user, we have not been shown, is permissible under the Act or the Rules. In the absence of such a provision and/or without following the statutory requirements thereof, if any, the State in exercise of its executive power could not have directed that lands meant for use for commercial purposes maybe used for industrial purposes."

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

iii) (Raju S.Jethmalini and others vs. State of Maharashtra and others) (2005) 11 Supreme Court Cases 222, wherein it was held by the Honourable Supreme Court in Para-3 thus:-

> "3. ....Therefore, the question is whether the Government can prepare a development plan and deprive the owner of the land from using that land? There is no prohibition of including private land in a development plan but no development can be made on that land unless that private land is acquired for development. The Government cannot deprive the persons from using their private property. We quite appreciate the interest of the residents of that area that for the benefit of the ecology, certain areas should be earmarked for garden and park so as to provide fresh air to the residents of that locality. In order to provide such amenities to the residents of the area private land can be acquired in order to effectuate their public purpose but without acquiring the private land the Government cannot deprive the owner of the land from using that land for residential purpose.....
>
> .....The question is whether without acquiring the land the Government can deprive a person of his use of the land. This in our opinion, cannot be done. It would have been possible for the Municipal Corporation and the Government of Maharashtra to acquire the land in order to provide civic amenities. But the land in question has not been acquired. We are quite conscious of the fact that the open park and garden are necessary for the residents of the area. But at the same time we cannot lose sight of the fact that a citizen is deprived of his rights without following proper procedure of law....."

iv) In (M.C. Mehta vs. Union of India and others) (2002) 9 Supreme Court Cases 534, the Honourable Supreme Court in Para-7 held thus:-

> "7. The master plan is formulated by the Government. It provides the manner in which the land is to be used. The Government is entitled to stop the misuser, if it so desires. By Order dated 08.09.1999, specific direction in this regard was issued. What appears to be happening is that a law is promulgated in the form of a master plan. The authorities concerned know about the infringement of the law and yet theychoose not to take any action in respect thereof. The effect of this is that the infringement of the law continues. If the law which has been promulgated is such that it cannot be implemented then the logical solution would be to amend the same. It appears to us that the authorities concerned do not appear to be serious in seeing that anything is regularised or carried out in a regular manner or in accordance with law. Neither is the law implemented nor enforced nor

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

changed. The continued infraction of the law appears to be encouraged and this has given rise to vested interests who appear to be so powerful as to see that even the orders of this Court are not implemented."

6. Mr. Viduthalai, learned Advocate General appearing for the respondent submitted as follows:-

The writ petition is not maintainable in law. The communication impugned in this writ petition is not a final order and the petitioner was only directed to submit 5 sets of revised plan satisfying Development Control Rules by providing 10 meter wide link road from Tambaram-Velacherry Main Road for opening up development in the rear side of the site under reference. Under Section 49 (2) (c) of the Act, the respondent is competent, while granting or refusing permission, to have regard to the future development and maintenance of the planning area impose conditions which are essential and accordingly, in the case on hand, the petitioner was directed to provide 10 meter wide link road. Alternative and efficacious remedy of appeal is provided under the Act, but without exhausting the same, the petitioner has filed the present writ petition. The respondent has rightly requested the petitioner to provide 10 meter wide road from Tambaram-Velacherry road to the rear side so as to open up development for the rear side vacant land for which no major road is available at present. The request for providing 10 meter wide link road was made only in the public interest and the respondent is empowered under Rule 2 (b) (ii) of the Development Control Rules which says that while granting permission, the Chennai Metropolitan Development Authority or other Authority or person to whom the Authority had delegated its powers may impose such restrictions and conditions as may be necessary under these Rules. If the 10 meter wide link road requested is not provided, the vast vacant land in the rear side will be deprived of proper acess from the main road, which cannot be utilised in future. While process of development, it is the normal practice to provide road so that the adjacent vacant land will get public access. The present site is also one such site so that it will ensure free flow of traffic in future and benefit public at large and prayed for dismissal of the writ petition.

7. This Court carefully considered the argument of counsel on both sides and perused the materials on record. The petitioner has submitted an application for planning permission for the proposed construction of stilt + four floors of residential building in 4 blocks and a ground + first floor club house in their lands to an extent of 4.47 acres comprised in Survey Nos. 192/1, 2, 193/1, 2, 3, 4, 5, 6A, 6B, 7, 8A, 8B, 197/1, 2, 3 and 198/1 of Medavakkam Village abutting the Tambaram-Velacherry-Velacherry Main Road. The respondent issued the impugned communication dated 07.03.2007 directing the petitioner to furnish five sets revised plan satisfying the development control rules by providing 10 meter wide link road from Tambaram-Velacherry Main Road for opening up development in the rear side of the site under reference along with scrutiny fee receipt at the rate Rs.0.375/sq.m of total built up area so as to take further action. Aggrieved by the said communication, the present writ petition has been filed. For disposal of this writ petition, it is necessary to refer to the relevant sections in the Act as well as Rules, which are as follows:-

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

"The Tamil Nadu Town and Country Planning Act, 1971

Section 2 (13) – Development means carrying out of all or any of the works contemplated in the regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land;.....

2 (37) Public Street means any street, road, square, court, alley, passage or riding-path over which the public have a right of way, whether a thoroughfare or not, and includes,-

(a) the roadway over any public bridge or causeway:

(b) the footway attached to any street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property whether that property is private property or property belonging to the Central or any State Government;

17. Master plan: (1) As soon as may be, after the declaration of a local planning area under section 10 and after the constitution of the appropriate planning authority under section 11, the local planning authority shall, within such time as may be prescribed and after consulting the regional planning authority and the local authorities concerned, prepare and submit to the Government, a plan hereinafter called the 'master plan' for the local planning area or any part of it and such other area or areas contiguous or adjacent to the local planning area, as the Government may direct to be included in the master plan.

(2) The master plan may propose or provide for all or any of the following matters, namely,--

(a) ..

(b) ..

(c) ..

(d) ..

(e) ..

(f) the major road and street improvements

(g) the areas reserved for future development, expansion and for new housing;

S.36. Power to acquire land under the Land Acquisition Act- Any land required, reserved or designated in a regional plan, master plan, detailed development plan or a new town development plan, as

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the case may be, shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (Central Act 1 of 1894) and may be acquired under the said Act as modified in the manner provided in this Act.

49. Application for permission- (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazzette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters namely--

(a) the purpose for which the permission is required

(b) the suitability of the place for such purpose

(c) the future development and maintenance of the planning area.

(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same."

2 (b)(ii) of DCR Rules : (ii) While granting permission the Chennai Metropolitan Development Authority or other Authority or person to whom the Authority had delegated its powers may impose such restrictions and conditions as may be necessary under these rules.

8. The Tamil Nadu Town and Country Planning Act provides for planning the development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith. Chapter II-A in which Section 9-C of the Act speaks about the powers and functions of Metropolitan Development Authority which permit to carry out survey for Chennai Metropolitan Area and prepare a master plan referred to in Section 17 of the Act. Accordingly, the respondent has carried out necessary surveys and studies and prepared a master plan for Chennai Metropolitan Area in 1975 and it has been approved by the Government. The master plan lays down policies and programmes for the overall development of Chennai Metropolitan Areas taking long term view requirements. The emphasis of the plan is on the regulation of land and building use. The plan has allocated land for uses such as industries, commerce, housing, play fields and other types of major urban land uses in appropriate locations and in a manner interrelated to each other so as

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

to promote orderliness and smooth functioning. For this purpose all lands in the Metropolitan area have been categorised under various zones. The grant of planning permissions within Chennai Metropolitan Area is being regulated in accordance with the Development Control Rules forming part of the Master Plan for Chennai Metropolitan Area.

9. Under Section 49 of the Act any person not being a State Government or Central Government or local authority intends to carry out any development of any land or building shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed. The petitioner has submitted an application as mentioned supra seeking planning permission. The respondent, by its impugned communication, directed the petitioner to provide 10 meter width link road. It is contended by the petitioner that such a condition cannot be imposed as the road insisted by the respondent is neither a scheme road nor a proposed road as contemplated by the master plan for Medavakkam Village and approved by the Government. The said contention was not refuted by the respondent, however, it is argued on behalf of the respondent that under Section 49 (2) (c) of the Act, the respondent, as a planning authority, while deciding to grant or refuse such permission, keeping in mind the future development and maintenance of the planning area, impose such condition. It is relevant to mention Rule 2 (b) (ii) of Development Control Rules which says that while granting permission the Chennai Metropolitan Development Authority or other Authority or person to whom the Authority had delegated its powers may impose such restrictions and conditions as may be necessary under these rules, which means that any condition imposed shall be in compliance of the said Act or Rules, hence, the argument of the learned Advocate General that it is open to the respondent to keep in mind future development of maintenance of the planning area by imposing any condition, though they are not found in the Act and Rules, cannot be accepted. In the absence of power and or without following statutory requirements thereof, the respondent, in exercise of its executive power, could not have directed the petitioner to provide 10 meter width link road. Followed (K.K. Bhalla vs. State of M.P. And others) (2006) 3 Supreme Court Cases 581.

10. Rule 19 (b) (II) (iii) of Development Control Rules pertaining to group development contemplates that the vehicular access way including passage if any, within the site shall have minimum width of 7.2 meters, which is admittedly complied with by the petitioner. The argument of the learned Advocate General relying on Rule 19 (b) (II) (iii) of Development Control Rules to say that minimum width of public road shall be 10 meters or the site shall gain access from a passage at a minimum width as specified in Rule 19 (b) (II) (III) means the requisite width of the road abutting the plot, which is irrelevant to the issues involved in this case. Indeed, the submission of the learned Senior Counsel appearing for the petitioner that if a road is provided with 10 meters width, it would cause irreparable loss and hardship to it cannot be ignored, hence, it is not difficult to hold that the impugned order, directing the petitioner to provide 10 meter width road is contrary to the provisions of the Act and Development Control Rules.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

11. Section 36 to 39 of the Act relating to powers of the respondent to acquire lands under the Land Acquisition Act. Any land required, reserved or re-designated in a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894, however, the State can prepare development plan covering the private lands, but no development can be made on that land unless the private land is acquired for development. Admittedly, the respondent has not prepared any development plan or master plan covering the lands of the petitioner or acquired it. Without acquiring the land of the petitioner, the respondent cannot deprive the petitioner of its use of the land. The respondent cannot deprive persons from using their private land. Even for providing amenities to the residents of the area, the private lands cannot be directed to be used without acquiring it as held in the decision reported in (Raju S.Jethmalini and others vs. State of Maharashtra and others) (2005) 11 Supreme Court Cases 222, mentioned supra.

12. The next argument of the learned Advocate General for the respondent is the petitioner, without exhausting the alternative remedy of appeal has filed the present writ petition, hence, it is not maintainable. The rule of alternative remedy cannot be said to be of universal application. This Court, under Article 226 of the Constitution of India, can exercise its inherent powers in cases where the authorities passed the order in the absence or excess of jurisdiction or adjudicate question of law. In this context, it is necessary to refer to the decision of the Honourable Supreme Court reported in (State of Tripura vs. Manoranjan Chakraborty and others) (2001) 10 Supreme Court Cases 740 wherein in Para No. 4 it was held thus:-

> "4. For the reasons contained in the said decisions, we hold that the impugned provisions are valid. It is, of course, clear that if gross injustice is done and it can be shown that for good reason the court should interfere, then notwithstanding the alternative remedy which may be available by way of an appeal under Section 20 or revision under Section 21, a writ court can in an appropriate case exercise its jurisdiction to do substantive justice. Normally of course the provisions of the Act would have to be complied with but the availability of the writ jurisdiction should dispel any doubt which a citizen has against a high-handed or palpable illegal order which may be passed by the assessing authority."

13. The Honourable Supreme Court has also held in the decisions reported in (A.V. Venkateswaran vs. Ramchand Sobhraj Wadhwani and another) AIR 1961 SC 1506 and (State of H.P. and others vs. Gujarat Ambuja Cement Limited and another) (2005) 6 Supreme Court Cases 499 held that where the orders or procedures are wholly without jurisdiction or the vires of an Act is challenged, notwithstanding the existence of alternative remedy, the writ petition is maintainable. Hence, the issue of maintainability raised by the respondent is also rejected.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

14. For the reasons mentioned above, the impugned communication bearing letter No.B1/24359/2006 dated 07.03.2007 of the respondent is quashed. The respondent is directed to consider the planning permission application of the petitioner and pass orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

15. The writ petition is disposed of in the above terms. No costs.

rsh

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Member Secretary
Chennai Metropolitan Development
Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Chennai - 600 008
+ One cc to Mr. J. Ravindran Advocatae SR 27198
+ One cc to Mr. N.L. Rajah Advocate SR 27152
MBS (co)
sg 25/4/07

Pre-delivery Order in
WP No. 8904 of 2007

23-04-2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/